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C O N F I D E N T I A L SECTION 01 OF 02 GUATEMALA 003161

SIPDIS

DEPARTMENT FOR WHA/CEN, IO/SHA, AND DRL/MLA

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TAGS: [PHUM](#) [PGOV](#) [PREL](#) [GT](#) [UN](#)

SUBJECT: GUATEMALAN OHCHR OFFICE NEGOTIATIONS AT DELICATE  
STAGE

REF: A. GUATEMALA 2868

[1](#)B. GUATEMALA 2965

Classified By: PolOff Nicole Otallah for Reasons 1.5 (b). and (d).

[1](#)1. (C) Summary: The DCM and Polcouns met with Ambassador Carla Rodriguez, MFA Director of Multilateral Affairs, on December 9 to discuss the state of play of negotiations between the GOG and UN to establish a local Office of the UN High Commissioner for Human Rights (OHCHR). Following divided recommendations from Congressional Committees on November 11 (Ref A), the GOG has spent several weeks trying to negotiate changes that would overcome Congressional objections, and therefore make the office a reality. Though the OHCHR and GOG are constantly moving closer to common ground on the agreement's language, they still need to tweak several points. We recommend that the US Mission in Geneva urge the High Commissioner to show flexibility on final changes (see para 9). Local European missions have informally indicated to us that they will send the same message to the OHCHR and PolOff will make the point with Project Coordinator for the Guatemala UN OHCHR, Birgit Gerstenberg, at a scheduled December 13 meeting. End Summary.

[1](#)2. (C) After the Foreign Relations and Human Rights Committee reported out contradictory recommendations regarding the establishment of a local OHCHR office on November 11 (Ref A, Foreign Relations against and Human Rights in favor), the GOG stepped in to negotiate changes to the agreement's text that would ensure that the agreement could gain Congressional approval. On December 6, Vice President Edward Stein indicated to the Ambassador and DCM that the GOG has put a pause on negotiations with Geneva in order to let overheated negotiations on both sides cool down. The OHCHR and the GOG have ironed out most of their differences, but frustration has grown while they decide on the final language for the agreement.

[1](#)3. (C) On December 9, Ambassador Rodriguez told the DCM that the MFA received what they regarded as a confusing letter from Louise Arbour, the UN High Commissioner, which suggests that the OHCHR's latest version on the agreement for a local Guatemala office has already been accepted by the GOG. To the contrary, the GOG had decided to take a break from the final negotiations and resume in early January with cooler heads. The MFA is concerned that the OHCHR, in its published "Annual Appeal 2005" and its December 13 funding request meeting with donor countries may be misconstruing the status of the negotiations. The GOG is still trying to reach an agreement that could win congressional approval -- it believes the December 1 text proposed by Louise Arbour would not garner that approval.

[1](#)4. (C) The key problem seems to be in point 4 of Article V. Where the OHCHR would like the first two sentences to read:

"The High Commissioner shall report to the Commission on Human Rights in an addendum to her own report (Item IV), on the Office's activities and on the country's human rights situation. The report shall also contain such comments and recommendations as deemed appropriate by the High Commissioner."

[1](#)5. (C) The GOG would like the first two sentences of point 4 in Article V to say:

"The High Commissioner shall report to the Commission on Human Rights in her report under item IV of the agenda on the Office's activities. The report shall also contain such comments and recommendations as deemed appropriate by the High Commissioner to strengthen the promotion and protection of human rights in Guatemala." (Rodriguez thought that this formulation of the second sentence gave the OHCHR sufficient leeway to report on the human rights situation, i.e., in making recommendations, the report would necessarily have to cover the human rights situation in Guatemala.)

[1](#)6. (C) The MFA believes the latter formulation is more consistent with the mandate outlined in the preamble:

"Bearing in mind the interest of the Government of Guatemala to establish an OHCHR office in Guatemala, with a mandate to provide technical assistance to Guatemalan authorities in formulating and implementing policies and programs for the promotion and protection of human rights, monitor the evolution of the country's human rights situation and submit to the High Commissioner reports on the establishment of the Office and the activities it carries out pursuant to its mandate;..."

17. (C) Rodriguez indicated that FM Briz had accepted the notion of being reported under item IV (items III, IX, and XIX were problematic in their own ways), and that the MFA was prepared to try to sell the renegotiated agreement on this basis over the expected objections of influential congressional critic Antonio Arenales Forno (who sits on both the Human Rights and Foreign Relations Committees and who is a former Guatemalan Ambassador in Geneva). The MFA was clearly frustrated that the OHCHR's December 1 message made no acknowledgment of the GOG's proposal for Article V point 4 (above). Rodriguez also noted that OHCHR was claiming that intransigent donors were insisting that OHCHR tow the line. If this were not the case, MFA was wondering if donors could encourage more flexibility out of Arbour's office.

18. (C) In informal consultations, local representatives from Norway, Sweden, and the Netherlands reported their belief that the OHCHR needs to show more flexibility about the conditions of human rights reporting from the Guatemala office.

19. (C) Comment: We recommend that the US Mission to Geneva approach the OHCHR to urge flexibility on the wording of final language. The OHCHR has achieved its principal goals by convincing the Guatemalans to include direct references to reporting in the agreement's text and by including the report in Article IV. Donor countries have more interest in the swift establishment of a Guatemalan OHCHR office than insistence on specific terminology that is unlikely to affect the eventual functioning of such an institution. PolOff will meet with the Guatemala UN OHCHR representative, Birgit Gerstenberg (who will remain in Guatemala until early February, despite the public closure of her office in November), on December 13 to communicate the same message.  
HAMILTON